

FILED

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICOUNITED STATES DISTRICT COURT  
OF THE DISTRICT OF NEW MEXICO

FEB 06 2020

MITCHELL R. ELFERS  
CLERK /mjUNITED STATES OF AMERICA,  
(PLAINTIFF)

DATE: 02/03/2020

VS.

MICHAEL J. NISSEN  
(DEFENDANT)NOTICE OF MOTION FOR  
ACQUITTAL, OVERTURN GUILTY  
VERDICT, OR, DISMISS  
INFORMATION OF CONVICTION  
OF COUNTS I AND II

CASE # 1:19-CR-00077-JB

NOTICE OF MOTION FOR ACQUITTAL, OVERTURN  
GUILTY VERDICT, OR, DISMISS INFORMATION OF  
CONVICTION OF COUNTS I AND II.

NOW COMES, MICHAEL J. NISSEN, (HEREIN - AFTER  
DEFENDANT) IN THE ABOVE ENTITLED ACTION, RESPECTFULLY  
MOVES THE HONORABLE COURT TO CAREFULLY CONSIDER  
AN ORDER IN DEFENDANTS FAVOR OF THIS MOTION FOR  
HIS ACQUITTAL, OVERTURN GUILTY VERDICT, OR, DISMISS  
INFORMATION OF CONVICTION OF COUNTS I AND II.

IN THE HEREIN DEFENDANT WILL STATE HIS  
AFFIRMATIVE CONCLUSIONS AS TO WHY THE HONORABLE  
COURT SHOULD ORDER AN ACQUITTAL, OVERTURN GUILTY  
VERDICT, OR, DISMISS INFORMATION OF CONVICTION

1 OF COUNTS I AND II.

2  
3 1) RELIGIOUS FREEDOM RESTORATION ACT ENACTED  
4 NOVEMBER 16, 1993 OF THE FEDERAL CIVIL RIGHTS  
5 ACTS.

6  
7 2) THE PURPOSE OF THE RFRA OF 1993 IS (1) TO  
8 RESTORE THE COMPELLING INTEREST TEST AS SET FORTH IN  
9 SHERBERT V. VERNER, 374 U.S. 398; 10 L. ED. 2D 965;  
10 83 S. CT. 1790 (1963) AND WISCONSIN V. YODER, 406 U.S.  
11 205; 32 L. ED. 2D 15; 92 S. CT. 1526 (1972) AND TO  
12 GUARANTEE ITS APPLICATION IN ALL CASES WHERE FREE  
13 EXERCISE OF RELIGION IS SUBSTANTIALLY BURDENED,  
14 AND (2) TO PROVIDE A CLAIM OR DEFENSE TO PERSON WHOSE  
15 RELIGIOUS EXERCISE IS SUBSTANTIALLY BURDENED BY  
16 GOVERNMENT. [42 U.S.C. § 2000BB(B)].

17  
18 (3) JUDICIAL RELIEF AND CLAIMS AND DEFENSES.  
19 THE ACT PROVIDES THAT A PERSON WHOSE RELIGIOUS  
20 EXERCISE HAS BEEN BURDENED IN VIOLATION OF THIS  
21 SECTION MAY ASSERT THAT VIOLATION AS A CLAIM OR  
22 DEFENSE IN A JUDICIAL PROCEEDING AND OBTAIN  
23 APPROPRIATE RELIEF AGAINST A GOVERNMENT.

24 [42 U.S.C. § 2000BB-1(C)]

25  
26 4) RETROACTIVE APPLICATION OF THE ACT "APPLIES"  
27 TO ALL FEDERAL AND STATE LAW, AND THE IMPLEMENTATION  
28 OF THAT LAW, WHETHER STATUTORY OR OTHERWISE, AND

1 WHETHER ADOPTED BEFORE OR AFTER THE ENACTMENT  
2 OF THIS ACT. [42 U.S.C. § 2000BB-3(A)]  
3

4 5) THE CONSTITUTIONAL BACKDROP OF THE RIGHT -  
5 PRIVILEGE DISTINCTION. "RIGHTS EXIST PRIOR TO THE  
6 GOVERNMENT, THEY ARE NOT CREATED BY IT. INDIVIDUALS  
7 ARE THOUGHT OF AS POSSESSING THESE RIGHTS FROM  
8 BIRTH, BY VIRTUE OF THEIR HUMANITY OR AS ENTITLEMENTS  
9 OF NATURAL LAW OR, AS THOMAS JEFFERSON WROTE  
10 IN THE DECLARATION OF INDEPENDENCE, AS ENDOWMENTS  
11 FROM THE CREATOR.  
12

13 6) THE LEGISLATIVE HISTORY OF THE HOUSE REPORT  
14 TO THE RELIGIOUS FREEDOM RESTORATION ACT EXPLAINED  
15 THE CONSTITUTIONAL AUTHORITY FOR CONGRESS TO ENACT  
16 THE LAW AS GROUNDED IN CONGRESS'S POWER TO ENFORCE  
17 THE FOURTEENTH AMENDMENT PURSUANT TO § 5 OF THAT  
18 AMENDMENT: "FINALLY, THE COMMITTEE BELIEVES THAT  
19 CONGRESS HAS THE CONSTITUTIONAL AUTHORITY TO ENACT  
20 H.R. 1308. PURSUANT TO SECTION 5 OF THE FOURTEENTH  
21 AMENDMENT AND THE NECESSARY AND PROPER CLAUSE  
22 EMBODIED IN ARTICLE I, SECTION 8 OF THE CONSTITUTION,  
23 THE LEGISLATIVE BRANCH HAS BEEN GIVEN THE AUTHORITY  
24 TO PROVIDE STATUTORY PROTECTION FOR A CONSTITUTIONAL  
25 VALUE WHEN THE SUPREME COURT HAS BEEN UNWILLING TO  
26 ASSERT ITS AUTHORITY. THE SUPREME COURT HAS  
27 REPEATEDLY UPHOLD SUCH CONGRESSIONAL ACTION  
28 AFTER DECLINING TO FIND A CONSTITUTIONAL

1 PROTECTION ITSELF. HOWEVER LIMITS TO CONGRESSIONAL  
 2 AUTHORITY DO EXIST. CONGRESS MAY NOT (1) CREATE A  
 3 STATUTORY RIGHT PROHIBITED BY SOME OTHER PROVISION OF  
 4 THE CONSTITUTION, (2) REMOVE RIGHTS GRANTED BY THE  
 5 CONSTITUTION, OR (3) CREATE A RIGHT INCONSISTENT WITH  
 6 AN OBJECTIVE OF A CONSTITUTIONAL PROVISION. BECAUSE  
 7 H.R. 1308 IS WELL WITHIN THESE LIMITS, THE COMMITTEE  
 8 BELIEVES THAT IN PASSING THE RELIGIOUS FREEDOM  
 9 RESTORATION ACT, CONGRESS APPROPRIATELY CREATES A  
 10 STATUTORY RIGHT WITHIN THE PERIMETER OF ITS POWER.  
 11 [H.R. REP, NO. 88, 103D CONG., 1<sup>ST</sup> SESS. (1993), CITING SOUTH  
 12 CAROLINA V. KATZENBACH, 383 U.S. 301 (1966); OREGON V.  
 13 MITCHELL, 400 U.S. 112 (1970); ROSE V. UNITED STATES,  
 14 446 U.S. 156 (1980); THORNBURG V. GINGLES, 478 U.S. 30 (1986)].

15  
 16 WHEREFORE, THE DEFENDANT PRAYS FOR AN ORDER  
 17 OF THE COURT FOR ACQUITTAL, OVERTURN GUILTY VERDICT,  
 18 OR, DISMISSAL OF INFORMATION OF CONVICTION ON COUNTS  
 19 I AND II, AND GRANT SUCH FURTHER RELIEF AS THE COURTS  
 20 DEEM JUST, PROPER AND EQUITABLE IN THE INTEREST OF  
 21 JUSTICE, AND IN ACCORDANCE WITH THE SUPREME LAW OF  
 22 THE LAND TO WET THE UNITED STATES CONSTITUTION  
 23 INCLUDING ITS ARTICLES, AND AMENDMENTS, AND  
 24 MAY GOD BLESS AMERICA.

25  
 26 DATED: 02/03/2020

RESPECTFULLY SUBMITTED,  
 Michael J. Nissen

27  
 28 OFFICIAL SEAL  
 Birdie Jones  
 NOTARY PUBLIC-State of New Mexico  
 My Commission Expires 10-22-2023

MICHAEL J. NISSEN  
 (DEFENDANT)

ATTORNEY OR DEFENDANT WITHOUT ATTORNEY (NAME, ADDRESS) MICHAEL J. NISSEN 02508151 P.O. BOX 3540 CIBOLA COUNTY CORRECTIONAL CENTER MILAN, NM 87021	RESERVED FOR CLERKS FILE STAMP
UNITED STATES DISTRICT COURT 333 LOMAS BLVD, NW ALBUQUERQUE, NM 87102	
DEFENDANT; MICHAEL J. NISSEN 03/08/1965	CASE # 1:19-CR-00077-JB
PROOF OF SERVICE BY MAIL	

- 1) I AM OVER THE AGE OF 18 AND NOT A PARTY TO THIS ACTION.
- 2) I SERVED THE FOLLOWING; NOTICE OF MOTION FOR ACQUITTAL, OVERTURN GUILTY VERDICT, OR, DISMISS INFORMATION OF CONVICTION OF COUNTS I AND II
- 3) I SERVED A COPY OF THE DOCUMENTS ON 02/03/2020 AS FOLLOWS  
(DATE)  
☒ BY MAIL; I SERVED THE DOCUMENTS BY ENCLOSING THEM IN AN ENVELOPE AND DEPOSITING THE SEALED ENVELOPE WITH THE UNITED STATES POSTAL SERVICE WITH THE POSTAGE FULLY PREPAID TO THE ADDRESS SHOWN BELOW:

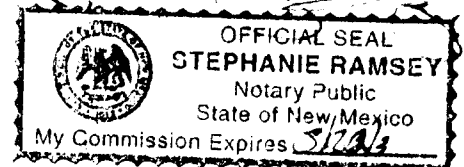
UNITED STATES DISTRICT COURT  
333 LOMAS BLVD, NW  
ALBUQUERQUE, NM 87102

4) I AM:

☒ NOT A REGISTERED NEW MEXICO PROCESS SERVER.

5) MY NAME, ADDRESS, TELEPHONE NUMBER

PAUL G. CARRILLO, JR.  
6503 KARLSON DR. NE  
ALBUQUERQUE, N.M. 87113



6) I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEW MEXICO THAT THE FOREGOING IS TRUE AND CORRECT: DATE: 02/03/2020

PAUL G. CARRILLO, JR.  
(TYPE OR PRINT NAME OF PERSON  
WHO SERVED THE PAPERS)

(SIGNATURE OF PERSON WHO  
SERVED THE PAPERS)

PROOF OF SERVICE BY MAIL

MICHAEL NISSEN

15180520

P.O. Box 3540

CIBOLA COUNTY CONCENTRATION CAMP

MILAN, NM 87021

# ALDORE

1541-320

SECRET

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S. NEW MEXICO

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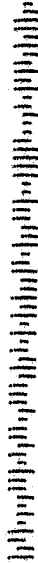
AI BUQUERQUE, NM 87100

ALL R. CLERS  
CLERK

CLERK

Thy friend  
Wm Lloyd Garrison

ORIGINATOR





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